

TOWN OF LAUDERDALE-BY-THE-SEA

BOARD OF ADJUSTMENT MINUTES

Town Commission Meeting Room
Wednesday, April 16, 2008 at 11:00 A.M.

I. CALL TO ORDER

Chairman William Hubly called the meeting to order at 11:00 a.m. Members present were Chairman William Hubly, James Pollock, Kenneth Mikos, and Joseph Couriel. Also present were Town Attorney Daniel Abbott, Zoning Official Tatiana Solovieva, and Board Secretary Colleen Tyrrell.

II. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

III. APPROVAL OF MINUTES

Regular Meeting – November 20, 2007

The Board had no revisions to the minutes of November 20, 2007. A motion was made by Kenneth Mikos seconded by Joseph Couriel, to approve the minutes as presented. All voted in favor to approve the November 20, 2007 minutes.

IV. NEW BUSINESS

A.	Project:	Construction for an accessory structure, Tiki Hut.
	Applicant:	Donald Mickey Coblentz, Property Owner
	Location:	1907 SE 19 th Street
	Request:	Description of Variance request
		The property owner is seeking a Variance from the provisions of the Section 30-313(31) (c) to allow an accessory structure, Tiki Hut, to be constructed 7 feet from the principle building rather than 10 feet as required by the Code.

Chairman Hubly asked Applicant Donald Coblentz to come forward to explain his request for a variance.

Town Attorney Daniel Abbott swore in all those that were speaking on the Coblentz variance request.

Mr. Coblentz explained that the Tiki structure was built too close to the wall of the existing building and was advised that he needed to apply for a variance.

Mr. Pollock asked Mr. Coblentz when he bought the home.

Mr. Coblentz said that he bought the house two years and two months ago.

Mr. Mikos asked if the Tiki Hut was there when Mr. Coblentz purchased the home.

Mr. Coblentz advised that there was a hot tub in that location when he bought the home.

Mr. Mikos said he was aware that a permit was not pulled to build the Tiki Hut and asked Mr. Coblentz why he did not obtain a permit.

Mr. Coblentz said the builder of the Tiki Hut, Culinary Concepts on Atlantic and US1, said that a permit was not required and that nobody cared about Tiki Huts. Mr. Coblentz said that he told the builder that it had to be built according to code.

Mr. Pollock commented that he knew the owner, Dean, of Culinary Concepts.

Mr. Mikos said because it must be built according to the building code, the Board was there to just consider the variance issue.

Zoning Official Tatiana Solovieva came forward to present Staff report that was provided in the backup material for the Board's review. Ms Solovieva said that the Tiki Hut constructed in the rear yard meets set-back requirements. However, the structure does not meet the distance separation requirements between the principal building of ten feet. Ms Solovieva referred to the property survey that noted that the Tiki Hut was 7 feet from the house. Ms Solovieva said that the pervious area of the property was in excess of the minimum requirement of 25%. Ms Solovieva said it was very difficult to review the provided calculation because of the shape of the property. However, she felt confident the calculations were accurate. She also emphasized that it is very difficult for the property owner to meet the required setbacks and distance separation at the same time because the property was an unusual angular shape. Ms Solovieva referred to the photo provided in the packet that was taken from across the canal of the rear of the house and advised the Board to look at the Tiki Hut and notice that only two chairs could fit at the counter. She also said that the neighbors signed a form stating that they did not object to the Tiki Hut structure and that the form was also included in the backup material. Ms Solovieva said that the property met all other requirements except for the distance separation from the main building. Ms Solovieva informed the Board that she spoke to the Fire Marshall Charlene Smith about the Tiki Hut. The Fire Marshall had no objection to the structure as it was not blocking any doors. However, the Fire Marshall said that she would review the location of the barbeque cooking equipment for any possible fire hazard adjacent to the Tiki Hut. Ms Solovieva said that she completed a very thorough check to prevent any problem with the variance.

Chairman Hubly asked for Board comments.

Mr. Pollock said that Staff was recommending approval of the variance because the hardship for the Applicant was that the property was a trapezium shape which makes it difficult to provide the required setbacks and distance separation.

Ms Solovieva said that was correct and that the front of the property was about 50 feet and the rear was almost 110 feet. Ms Solovieva also mentioned that the Tiki Hut was an open-air structure that does not block the view and the structure is located in the rear yard.

Chairman Hubly noted that the photograph showed that the structure did not obstruct the neighbors view and asked the Board for further comments.

Mr. Couriel asked Mr. Coblentz to explain the hardship and referred to item #4 of the Town Code requirements for variance approval in Staff's report which states, "The hardship is not self-created or the result of mere disregard, or ignorance of the provisions of the regulations". Mr. Couriel said that he felt that Mr. Coblentz self-created the problem and that it was his responsibility to make sure a permit was not required and that he should have checked further with the facilities at the Town. Mr. Couriel said that this problem was self-inflicted because Mr. Coblentz did not check further into the regulation requirements for a permit and because of that Mr. Couriel did not feel the Board should be amenable to granting the variance. Mr. Couriel said that this structure was strictly for entertainment and he did not see the need to have the structure in order for Mr. Coblentz to enjoy his home. Mr. Couriel said that he did not think it was right for people to go and do what they wanted and then try to correct it after the fact. Mr. Couriel asked Ms. Solovieva how Staff could recommend this for a variance.

Ms Solovieva referred to the Staff report that mentioned the Tiki Hut was constructed without a building permit and Mr. Coblentz was in violation. Ms Solovieva said that when Mr. Coblentz submits for a building permit, he would have to pay a double fee.

Mr. Couriel responded that if Mr. Coblentz had submitted for a permit to begin with, he would not have been approved to build this structure.

Ms Solovieva said that was correct, however, Mr. Coblentz would have the option of going before the Board of Adjustment for a variance. Ms Solovieva said that if he destroys this Tiki Hut, there would be pavers and they would not be part of the pervious area. Ms Solovieva said the hardship was the shape of the property. Ms Solovieva advised the Board that Mr. Coblentz would be punished for the job without a permit by paying a double fee for the building permit.

Mr. Couriel said that Item #4 precludes the shape of the property as a hardship and asked Town Attorney Abbott for his comments.

Town Attorney Abbott said that Mr. Couriel was correct in determining the criteria for the variance. However, Attorney Abbott said it was his understanding that the hardship claim was that it would have been difficult to construct the structure because of the shape of the property. Attorney Abbott said that the shape of the property was not self-inflicted and based on that, the Board would be inclined to recommend adoption of the variance.

Mr. Couriel asked Mr. Coblentz if he added anything to the house when he bought it?

Mr. Coblentz said that he had to change the driveway because he found out it was illegally done by the previous owner and stated that he had not made any additions to the house.

Mr. Mikos asked if it was possible to make the structure smaller to bring it into compliance?

Chairman Hubly asked if the 10 feet could have been picked up if the structure was built smaller and rotated slightly.

Mr. Mikos said he agreed with Mr. Couriel and that he also has a problem with people who disregard things and then come before the Board and ask them to fix it. Mr. Mikos also mentioned that the neighbors do not have a problem with the Tiki Hut. Mr. Mikos wondered if the Tiki Hut was just built too big for the area.

Ms Solovieva said that it was possible in some ways but if it was rotated, it might not meet the rear setback requirements. Ms Solovieva said that when she was in the back of the Tiki Hut, the counter was small and that only one or two people could fit. Ms Solovieva said that in her opinion, if the size of the Tiki Hut was restricted to three feet less, the construction of the Tiki Hut would not be possible at all.

Chairman Hubly asked for further comments from the Board.

Mr. Couriel referred to Item #7 of the Town's Code requirements in the Staff report, which states that "financial hardship is not a basis for granting a variance".

Chairman Hubly said that Item #7 had nothing to do with the variance and stated that Mr. Coblentz built this structure with the understanding that the contractor would build the Tiki Hut according to code and was advised that a permit was not required. Chairman Hubly said that he could in a sense understand how that could happen since they were replacing something that was already there. Chairman Hubly also understood that the hardship was actually Item #1 in Staff's report based on special conditions and circumstances that existed affecting the land rather than it being self-created. Finally, Chairman Hubly stated that this structure is primarily air, a roof and a counter, and so it is not as if the Board was looking at someone who built a garage or some massive structure. Chairman Hubly said that since the pervious percentage was good, Chairman Hubly found that Mr. Coblentz had not really abused anything. Chairman Hubly said that Mr. Coblentz would be fined when he applied for a permit and that the fine had nothing to do with the Board. Chairman Hubly agreed that the shape of the land was the primary hardship.

Mr. Pollock said that he was familiar with Culinary Concepts and it was a long-time established company. Mr. Pollock said that if you went to their facility and saw their showroom, you would know that you would be dealing with a very reputable vendor. Mr. Pollock said that he would talk to Dean and advise him that anytime they do work in the Town, to check to make sure if permits are required. Mr. Pollock said something should be put in the Town Topics that if you are thinking of doing any type of work and you are not sure if a permit is needed, to call Development Services and ask for help. Mr. Pollock said that he was familiar with Mr. Coblentz's property and said that he might have done the same thing if Dean had told him a permit was not needed.

Mr. Coblentz said that he bought the home with an illegal driveway. Also, the boatlift was installed without a permit by the previous owner and he had to get a structural engineer to do "as built" for that.

Mr. Mikos liked the idea of putting something in the Town Topics to check with Development Services first before doing work to determine if a permit is needed. Mr. Mikos said that because this is an open-air structure and the neighbors didn't care and it is esthetically pleasing, he would vote to approve the variance.

Chairman Hubly asked the Board to make a motion.

Mr. Pollock made a motion to approve the variance as recommended by Town Staff. The motion was seconded by Mr. Mikos. In a roll call vote, Chairman Hubly, Mr. Mikos, and Mr. Pollock voted yes. Mr. Couriel voted no. The motion passed 3 – 1.

V. OLD BUSINESS
NONE

VI. UPDATES/BOARD MEMBER CONCERNS

Mr. Mikos welcomed Daniel Abbott as the new Town Attorney and noted that this was the first meeting that Attorney Abbott had attended for the Town. The Board welcomed Attorney Abbott.

Town Attorney Daniel Abbott said that he was with the firm Weiss, Serota and Helfman and that his firm was selected at the last Town Commission meeting to serve as the Town Attorney and to also provide representation at this Board and the Planning and Zoning Board. Attorney Abbott said that he was looking forward to working with the Town.

Chairman Hubly said that this was his last meeting and said that he appreciated working with all of the Board members and also with the Board Secretary Colleen Tyrrell

Zoning Official Tatiana Solovieva announced that this variance was scheduled to go before the Town Commission on Tuesday, May 13, 2008 at 7:00 p.m and instructed Mr. Coblentz to be present.

Mr. Hubly commented to Mr. Coblentz that a previous variance was recommended to go before the Town Commission for approval and the Applicant did not show up and the variance was denied. Chairman Hubly emphasized that it was important for Mr. Coblentz to attend the Town Commission meeting.

VII. ADJOURNMENT

Having nothing further to discuss, Chairman Hubly adjourned the meeting at 11:40 A.M. April 16, 2008.

William Hubly, Chairman

ATTEST:

Date Accepted: _____

Colleen Tyrrell, Board Secretary
